

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

BRIAN FLOOD et al.,

Plaintiffs and Respondents,

v.

MARC VANEFSKY,

Defendant and Appellant.

G042657

(Super. Ct. No. 30-2008-00113565)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Sheila Fell, Judge. Reversed.

Law Offices of Joshua B. Vinograd and Joshua B. Vinograd for Defendant and Appellant.

Russo & Duckworth and J. Scott Russo for Plaintiffs and Respondents.

*

*

*

Defendant Marc Vanefsky was sued by his neighbors, Plaintiffs Brian and Dana Flood. Plaintiffs sought to enforce applicable CC&Rs, contending defendant violated requirements relating to the height of trees and alleging defendant's trees blocked their view. After a bench trial, the court issued judgment in favor of plaintiffs.

Before trial, the parties submitted a statement of controverted issues. After the trial, the court issued a tentative decision responding to each of them. Thereafter, defendant filed a request for statement of decision, specifying some 20 purported questions, 18 of which were not previously identified in the parties' statement of controverted issues. The court took no further action other than to sign the judgment.

Code of Civil Procedure section 632 requires the court, after a bench trial, to "issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial." The court could have made an order adopting its tentative decision as its statement of decision. (See e.g., *Wolfe v. Lipsy* (1985) 163 Cal.App.3d 633, 643.) We are not now deciding whether this would have been an adequate response to defendant's request for a statement of decision had it done so. In the alternative, the court could have prepared a more detailed statement of decision. But none was prepared.

Defendant raises the absence of a statement of decision as one of several issues in his appeal and we must reverse the judgment on that basis. We therefore remand the case to the trial court to permit the court to comply with the request for a statement of decision and thereafter issue a new judgment.

This case presents an unfortunate procedural glitz. Since the remand is unlikely to result in a different judgment, and a new appeal raising the same issues we may not deal with now would appear likely, we will permit the parties to submit any such new appeal on the record and briefs previously filed herein, together with supplemental letter briefs.

The judgment is reversed and the case is remanded for the court to issue a statement of decision and a new judgment based thereon. In the interest of justice, the parties shall bear their own costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

O'LEARY, J.

IKOLA, J.